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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,634	03/15/2002	Michael P. Whitman	11443/72	4140
26646	7590	01/23/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			FLANAGAN, BEVERLY MEINDL	
			ART UNIT	PAPER NUMBER
			3739	
DATE MAILED: 01/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/099,634	WHITMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Beverly M. Flanagan	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-16, 19-21, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37 and 38 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

  
 BEVERLY M. FLANAGAN  
 PRIMARY EXAMINER

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Entry of Amendment***

The amendment filed October 31, 2005 has been entered and made of record. Accordingly, the status of the claims is as follows: claims 1-9, 11-16, 19-21, 37 and 38 are pending; Claims 10, 17, 18 and 22-36 are canceled.

### ***Previously Set Forth Rejections***

The 35 U.S.C. § 112, second paragraph, rejection of claim 15 has been *overcome*. The 35 U.S.C. § 102(e) rejection of claims 1-3 as being anticipated by Higuma et al. (U.S. Patent No. 6,547,721) is hereby *withdrawn*. The 35 U.S.C. § 103(a) rejection of claims 7-9, 11-16 and 19 as being unpatentable over Higuma et al. (U.S. Patent No. 6,547,721) in view of Ishikawa et al. (U.S. Patent No. 6,071,233) is hereby *maintained*. The 35 U.S.C. § 103(a) rejection of claims 4-6, 20 and 21 as being unpatentable over Higuma et al. (U.S. Patent No. 6,547,721) in view of Ishikawa et al. (U.S. Patent No. 6,071,233) and further in view of Abe (U.S. Patent No. 6,669,628) is hereby *maintained*.

**The following new grounds of rejection are set forth:**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higuma et al. (U.S. Patent No. 6,547,721).

**In regard to claims 1-3**, Higuma et al. teach an endoscope 1 comprised of an insertion unit 2, an operation unit 3 and a universal cord 4 (see Figure 1). Insertion unit 2 has a bendable part 9 having bending pieces 32 that actuate to bend the bendable part 9 via actuation of bending lever 11 (see Figure 3). An armor tube 35 made of a polymeric material, such a fluorine-contained rubber, surrounds the insertion unit 2 and bendable part 9 (see Figure 3 and col. 8, lines 10-14). Higuma et al. also teach a moisture absorptive member 158 that, as broadly as claimed, constitutes a moisture sensor disposed within the armor tube 35 to detect moisture. As Higuma et al. disclose that moisture absorptive member may be removed (see col. 26, lines 1-2), it follows that its appearance would communicate the presence of moisture (indicating the need for removal and replacement).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9, 11-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higuma et al. (U.S. Patent No. 6,547,721) in view of Ishikawa et al. (U.S. Patent No. 6,071,233).

**In regard to claims 11-13 and 19**, see the above rejections for claims 1-3. **With further respect to claim 11 and in regard to claims 7-9 and 14-16**, Higuma et al. are silent as to a coupling including a locking mechanism that attached to armor tube 35. However, Ishikawa et al. disclose a channel tube 2 that is coupled to an endoscope to allow the passage of instruments via a fixing tape 42 (see Figures 3A and 3B). Higuma et al. thus demonstrate that channel tube 2 that detachably couple to the exterior of an endoscope via a flexible strip locking mechanism are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the endoscope 1 of Higuma et al. with the channel tube 2 and flexible tape 42 of Ishikawa et al. as a means to attach an additional tool tube to the exterior of the endoscope.

Claims 4-6, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higuma et al. (U.S. Patent No. 6,547,721) in view of Ishikawa et al. (U.S. Patent No. 6,071,233), as set forth above, and further in view of Abe (U.S. Patent No. 6,669,628).

**In regard to claims 4-6, 20 and 21**, Higuma et al. and Ishikawa et al. are silent as to a memory unit disposed on the endoscope 1. However, Abe discloses an endoscope having a memory 33 for storing data (see col. 3, lines 25-32). Abe thus

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demonstrates that endoscopes having the ability to store data are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the endoscope of Higuma et al. with the memory 33 discloses by Abe.

***Allowable Subject Matter***

Claims 37 and 38 are allowed.

***Response to Arguments***

Applicant's arguments filed on October 31, 2005 have been fully considered but they are not persuasive. Applicant main argument is that the Higuma et al. reference does not communicate the presence of moisture as does the instant invention, which includes a moisture sensor 990 coupled to a data transfer cable 38 to communicate an indication of the presence of moisture (at page 6 of the October 31, 2005 amendment). However, applicant does not recite the data transfer cable in claims 1 and 11 as a means for the communication of the presence of moisture. Therefore, as broadly as claimed, the communication of the presence of moisture can be accomplished by the moisture absorptive member 158 of Higuma et al., as when it would be removed and replaced, as contemplated by Higuma et al. (see col. 26, lines 1-2).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

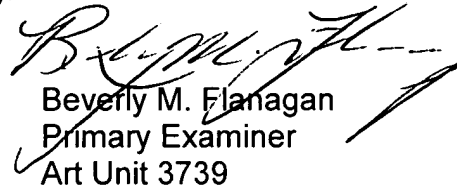
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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